

**BEFORE THE
CASE REVIEW PANEL**

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| In The Matter of A.J.S., |) | |
| Petitioner |) | |
| and |) | CAUSE NO. 010126-9 |
| The Indiana High School Athletic Assoc., |) | |
| Respondent |) | |
| |) | |
| Review Conducted Pursuant to |) | |
| I.C. 20-5-63 <i>et seq.</i> |) | |

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

A.J.S., Petitioner herein, is a seventeen-year-old junior (d/o/b July 11, 1983) presently attending Marion High School in the Marion Community Schools (hereafter, "Marion"). Prior to October 30, 2000, he attended Huntington North High School in the Huntington County Community School Corporation (hereafter, "Huntington"). He played varsity football at Huntington his sophomore and junior years, and was the starting quarterback this past season before he lost his position due to disciplinary infractions. He played freshmen basketball at Huntington but was cut from the team his sophomore year. He played varsity baseball his sophomore year. His tenure at Huntington was marked by sporadic academic difficulties, interpersonal clashes, and short-term suspensions, both in-school and out of school. These problems were exacerbated by a two-year campaign by the father of A.J.S. to have the Huntington football coach removed from his position.

The father works in sales for a Huntington business that sells athletic equipment to schools. It appears that several conversations occurred with other public schools regarding the father's disenchantment with the Huntington football coach and the program, as well as the possibility his son might transfer to another school. Although Petitioner was involved in the football season, he attended a 6:00 a.m. "open gym" session at Marion on October 19, 2000, where he played basketball with some members of the Marion team. His team lost its football playoff game on October 28, 2000, and Petitioner enrolled in Marion on October 30, 2000, ostensibly due to the legal separation of his parents, which occurred on October 11, 2000; the difficulties Petitioner was experiencing at Huntington; and the presence of a friend of the father at Marion, who was a guidance counselor and the girls' basketball coach.

On November 15, 2000, Petitioner filed an Athletic Transfer Report with Respondent, seeking full eligibility to participate in interscholastic sports at Marion. Huntington adamantly opposes eligibility for

Petitioner, asserting the move is athletically motivated. An assistant commissioner for Respondent ruled on December 1, 2000, that Petitioner would be ineligible for participation under **Rule C-19-4**.¹ Petitioner timely appealed to the Respondent's Review Committee under **Rule C-17-4**, which received evidence and testimony during a hearing conducted on January 11, 2001. On January 16, 2001, the Review Committee issued its written decision, upholding the original determination that Petitioner's transfer was primarily for athletic reasons and, therefore, he would be ineligible for interscholastic competition for 365 days from the date he transferred to Marion.

Petitioner sought eligibility under **Rule C-19-5**, which would grant him immediate eligibility if the transfer had a "corresponding change of residence to a new district or territory" by the Petitioner's parent so long as the change of residence was "bona fide."² Although Petitioner's father moved from the Huntington residence to live in an apartment in Marion, where Petitioner later joined him, Petitioner's mother and younger brother continued to reside in the Huntington residence. Respondent also noted that apartment is a small, one-bedroom apartment that does not appear to be a permanent residence. Respondent acknowledged the legal separation of Petitioner's parents, which was filed in the Huntington County Superior Court, but found the legal separation not to be "bona fide."³

¹The IHSAA has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders ("B" for Boys; "G" for Girls), but most of the by-laws are "common" to all potential athletes and, hence, begin with "C." **Rule 19**, which governs transfers and eligibility, is common to all athletes. **Rule C-19-4**, which governs transfers for primarily athletic reasons, prohibits a student from participating in interscholastic athletic competition for 365 days from the date of enrollment in the new school. This rule is intended "[t]o preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school 'jumping' for athletic reasons...[.]" especially where there has been "undue influence." Respondent also defines under **Rule 19** "transfer for primarily athletic reasons," in relevant part as "a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics[.]" All references herein are to the IHSAA's By-Laws for the 2000-2001 school year.

²Respondent defines "bona fide change of residence" under **Rule 19** as a fact-sensitive matter that must require the original residence be abandoned as a residence (sold, rented, or otherwise disposed of, or in the process of being sold, rented, or otherwise disposed of), and that no member of the immediate family be residing there. In addition, the student's entire immediate family must make the change and take with them their household goods and furniture.

³Respondent's by-laws do not define "bona fide" with respect to a lawfully issued court order. **Rule C-19-6.1** does provide immediate eligibility for a student who transfers without a corresponding change of residence where the student moves into a new district to reside with a parent where the parents are divorced or separated. It is not clear that Respondent has authority to determine the "bona fide" status of a court decree. The Case Review Panel does not have the authority to challenge the validity of such judicial orders.

Respondent concluded that fraud and deceit are involved in Petitioner's transfer, and there is a clear athletic motivation in the move.

APPEAL TO THE CASE REVIEW PANEL

As noted *supra*, the IHSAA's Review Committee issued its written decision on January 16, 2001. Petitioner sought review of the Respondent's final decision by initiating the instant action before the Case Review Panel (CRP), created by P.L. 15-2000, adding I.C. 20-5-63 *et seq.* to the Indiana Code. The CRP is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA, when a student, parent or guardian so requests. Its decisions are to be student-specific, applying only to the case before the CRP. The CRP's decision does not affect any By-Law of the IHSAA.

Petitioner initiated this review through a facsimile transmission received on January 26, 2001, by the Indiana Department of Education on behalf of the CRP. Both Petitioner and the Respondent were advised on that date of their respective hearing rights. Petitioner was presented with forms to permit or deny the disclosure of student-specific information that, in effect, would make the review hearing by the CRP open to the public. Petitioner elected to have the hearing closed to the public.

The parties were advised thereafter of the date, time, and place for the conduct of the review hearing. The review hearing was set for February 12, 2001, beginning at 10:00 a.m. (Indianapolis time) at the First Floor Conference Room, 251 E. Ohio St. Notice of the review hearing was posted, as required of public agencies by Indiana's Open Door Law, I.C. 5-14-1.5 *et seq.* CRP members were provided with copies of the record as established before the IHSAA. Petitioner appeared in person and by counsel. Respondent appeared by counsel and its Commissioner.

A brief pre-hearing conference was conducted. Petitioner submitted four (4) additional documents. Exhibits P-1 (current report card for Petitioner), P-2 (affidavit from Steve Mason, a family friend), and P-4 (nine photographs of Petitioner's apartment) were admitted without objection. Exhibit P-3, a letter from the attorney who represented Petitioner's mother in the legal separation action, was objected to as hearsay. The CRP acknowledged the hearsay nature of the document but allowed its introduction into the record with the limitations associated with hearsay documents. Respondent tendered one exhibit (Exhibit R-1), the 2000-2001 varsity basketball roster for Marion High School. Petitioner did not object to the introduction of this document.

Petitioner also moved for a separation of witnesses, which was granted. Witnesses were advised of the separation and admonished not to discuss their testimony with each other until the conclusion of these proceedings.

The record from the proceedings before Respondent's Review Committee was received. Additional

testimony was taken. Based upon the foregoing, the following Findings of Fact, Conclusions of Law, and Orders are determined.

FINDINGS OF FACT

1. Petitioner is a three-sport athlete (football, basketball, and baseball). He is presently seventeen years old (d/o/b July 11, 1983) and a junior at Marion High School. Until October 30, 2000, Petitioner had been enrolled as a student at Huntington North High School.
2. Petitioner's academic career at Huntington began well enough, but then his grades began to falter, notably in English, science, mathematics, and Spanish. Although he did not fail any classes for a semester, he did earn a number of C-minus, D-plus, and D-minus grades in these areas. He has improved upon his academic work since transferring to Marion. His semester grade point average was 2.86 on a 4.0 scale. His cumulative grade point average is 2.76.
3. Petitioner experienced difficulties with other classmates while enrolled at Huntington. These difficulties resulted in disciplinary sanctions during his freshman and junior years, to the extent Petitioner was faced with possible expulsion from school at the time he transferred. During his freshman year, Petitioner initiated an embarrassing rumor about another student who was also on the baseball team with him. This resulted in a confrontation during which Petitioner struck the other student. Petitioner received a one-day suspension from school along with two days of in-school suspension. At the beginning of the current 2000-2001 school year, Petitioner had been the starting quarterback on the football team until he lost his position due to a two-day suspension from school on October 3 and 4 following an exchange with a female football manager during which Petitioner used inappropriate language of a sexual nature. Petitioner played sparingly from that time until the end of the football season. Petitioner returned to school on October 5, 2000, but then engaged in intimidating action with respect to the football manager in the original incident. Petitioner was cautioned regarding this behavior and advised that any further contacts or actions of potential harassment could result in expulsion from school. Petitioner received another one-day in-school suspension on October 27, 2000, for comments made to another female student who had assisted in the investigation of the original complaint. October 27, 2000, was Petitioner's last day at Huntington. Petitioner has not been the subject of any complaints or disciplinary actions at Marion. However, there have been subsequent incidents involving Petitioner and the complainants at Huntington when Petitioner has returned to watch athletic contests. The situation has apparently devolved into both sides seeking restraining orders.
4. During March of Petitioner's sophomore year, Petitioner became the target of embarrassing remarks by other students, alleging that he was homosexual and that he had had a relationship with another male student. He spoke with his guidance counselor, who allowed him to eat his lunch in her office so as to avoid the students who were taunting him. Petitioner did not wish to

discuss the matter with administration but wanted to address these issues on his own. Eventually, he no longer came to the guidance office to eat his lunch. Petitioner testified that some students at Huntington persist in the taunting, including the posting of such comments at a web site.

5. Petitioner was also a discipline problem at home. The mother reported that she could not exercise disciplinary control over Petitioner. There was also discord in the marital relationship. Petitioner's parents have been married for over twenty-eight (28) years, having married on September 9, 1972. The mother and father separated on October 9, 2000, with the father moving to live with his father in the Huntington area (Petitioner's grandfather). The mother petitioned the Huntington County Superior Court for an order for legal separation. The mother and father reached a separation agreement, which the court approved on October 11, 2000. As part of the agreement, both parents enjoyed joint custody of Petitioner and his younger brother, but with the father having physical custody of Petitioner while Petitioner's 13-year-old brother remained with the mother. The mother and the younger brother remained in the Huntington house. The mother's employment in Huntington does not require her to live in that county. She is presently attempting to sell the Huntington residence and move elsewhere. The separation was reported in the local newspaper on October 16, 2000. Thereafter, Petitioner, to avoid attending an after-school athletic affair, informed his football coach that he had to attend an anniversary party for his parents that was being held in Fort Wayne.⁴
6. Petitioner's father is a sporting goods salesman. He is also an athletic official in three sports (softball, football, and basketball). In these capacities, he travels extensively throughout Indiana and especially in the north and northeast part of the state. He comes into contact with a number of athletic directors and coaches. Petitioner's father became disenchanted with the football program at Huntington and especially with the football coach. He asserts the football coach has grabbed the face masks of his players, including his son, and that he uses foul language. He also alleges the football coach has violated Respondent's by-laws by requiring football players to participate in more quarters of competition than permitted.⁵ School officials investigated

⁴It was this incident that originally resulted in Respondent questioning whether the legal separation was actually a ruse designed to satisfy Respondent's by-laws with respect to divorced or separated parents and thereby earn full eligibility for Petitioner. Evidence and testimony indicate, however, that the legal separation is genuine and that Petitioner's remark was intended to avoid a social obligation. His parents' anniversary is not in October and the legal separation had been reported in the local newspaper at the time he made his statement to the coach.

⁵Respondent's by-laws for football limit the number of quarters a student may play per week. If the student plays four quarters in a varsity contest, he cannot play any junior varsity or reserve games that week. There are gradations. If the student plays three varsity quarters, he can play one junior varsity quarter. If he plays two varsity quarters, he can play three junior varsity quarters. If he plays in

these complaints, finding no merit to the alleged excessive football participation by students. Petitioner and his father met with school officials, including the superintendent, regarding these concerns. Although school officials believed the meeting was thorough and beneficial, Petitioner's father remained disenchanted.

7. Petitioner's father engaged in a lengthy campaign to have the Huntington football coach removed from his position. Petitioner's father repeated his accusations to a number of other coaches and athletic directors, and repeatedly questioned the competency and integrity of the Huntington coach. Petitioner's father also raised these issues with the local school board. This disenchantment and criticism was well known, especially in Huntington County and the surrounding areas.
8. Petitioner was cut from the basketball team in his sophomore year. He testified that his coach referred to him as "uncoachable."
9. Although Petitioner selected "English 11 C.P." when completing his course selections for his junior year, and his mother reviewed and approved of his course selections, Petitioner's father sought a change of teacher because the father and the husband of the English teacher had had differences during the summer of 2000. The guidance counselor for Huntington provided the father with a "Change of Teacher Request Form," which requires that the father speak with the English teacher regarding these concerns. The form was returned by the father with a check mark in the space that indicated a telephone conversation between the parent and the teacher had occurred, along with a date and the father's signature. However, the English teacher reported that neither parent spoke with her, either in person or by telephone. Accordingly, the request for a change of teacher was denied by the school. The father has not refuted or otherwise explained these anomalies.
10. On or about October 9, 2000, Petitioner's father moved from the family residence to live with his father, who is reportedly not in good health. Petitioner's father eventually moved to an apartment in Marion in neighboring Grant County. He later moved to a one-bedroom apartment in Marion, which he shares with Petitioner. Although Petitioner was still on the Huntington football team and football season was still in progress, Petitioner's father took Petitioner with him for a business call at Marion High School on October 19, 2000, a school day. Petitioner's father also stated the purpose of trip was to locate a suitable apartment for the two of them. Petitioner and his father arrived at Marion during a 6:00 a.m. "Open Gym" session, a period of time before school starts where students can play basketball. Petitioner's father encouraged Petitioner to play basketball while he completed his business discussions.

one varsity quarter, he can play four junior varsity quarters. Typically, the junior varsity or reserve games are played during the week prior to the varsity games. See **Rule B-54-3.3**. In this instance, Petitioner's father alleged that students were participating in six quarters of play a week.

Petitioner did participate in the “Open Gym” session, playing basketball with current members of the Marion basketball team. Petitioner eventually returned to Huntington for the remainder of the school day.

11. School officials and coaches from other schools who had been engaged by Petitioner’s father in his continuing campaign to have the Huntington football coach dismissed also reported that it appeared Petitioner’s father was “shopping around” his son’s athletic prowess. The football coach from Fort Wayne Northrop High School (hereafter, “Fort Wayne”) reported that he and his staff were given this impression by Petitioner’s father. He also viewed an incident differently from Petitioner’s father. During a football playoff game, Petitioner’s father had reported that Fort Wayne coaches approached him and his son during halftime. The Fort Wayne coach stated that neither he nor his staff did so or would have done so. The contact was initiated by Petitioner’s father. The ensuing conversation left the Fort Wayne staff with the impression that Petitioner’s father was going to transfer Petitioner to Fort Wayne and was looking for assurances that his son would play for Fort Wayne.
12. Petitioner’s mother, prior to the separation, had been seeking employment in Allen County, where the Fort Wayne school is located. This was occurring during the time the conversation in Finding of Fact No. 9 took place. The family was contemplating a move to Allen County based on anticipated employment there. The father reported that it does not matter where he lives because the nature of his job as a sporting goods salesman does not require him to maintain hours at the Huntington store that he represents.
13. Petitioner’s father describes himself and his sons as intensely interested in athletics. Besides the personal and professional involvement described previously, Petitioner and his father often attend athletic contests involving other schools, including Marion. The father has sometimes sought free tickets from participating schools, including Fort Wayne. The Fort Wayne coach viewed the request for tickets to playoff games as unusual.
14. Although Petitioner’s father resided with his father (Petitioner’s grandfather) in Huntington immediately following the legal separation, shortly thereafter he prepared to move to Marion. There were several motivating factors in selecting Marion as opposed to other neighboring locales. A friend of the father is a guidance counselor at Marion with a successful history of helping students and student-athletes who are at risk of academic failure. There was testimony that the guidance counselor did, in fact, assist Petitioner in reaching decisions regarding post-secondary intentions (in this case, to attend college), and then addressing Petitioner’s college preparatory curriculum deficiencies. In addition, Marion is sufficiently close to Huntington so as to allow for Petitioner’s grandfather to attend athletic contests and watch his grandson perform. Petitioner, although without present eligibility to participate in interscholastic competition, has been practicing with the Marion basketball team and would likely be a member of the varsity team but for the lack of eligibility.

15. Although Huntington and Marion are athletic rivals, Marion denies that it exercised any undue influence or otherwise attempted to recruit Petitioner. Huntington agrees that Marion has not engaged in any unauthorized activities with respect to Petitioner's enrollment in Marion.
16. Petitioner's father maintains that core reasons for transferring Petitioner to Marion were to avoid a possible expulsion from Huntington, which would have prevented his enrollment in any other school during the term of expulsion; to remove him from the deteriorating situation involving the female students and alleged harassment; to remove him from the continuing insinuations regarding his sexual orientation; and to provide Petitioner with a "fresh start" regarding his academic and disciplinary track record. The father denies that participation in athletics at Marion had anything whatsoever to do with the decision to transfer to Marion. However, it was stated that should Petitioner not participate in athletics, his current progress in athletics and personal discipline may deteriorate.

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition is "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. P.L. 15-2000, adding I.C. 20-5-63 *et seq.* to the Indiana Code. The Case Review Panel has jurisdiction when a parent, guardian, or eligible student invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. The student has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.
2. The court order approving the terms of the legal separation of Petitioner's parents is not subject to review by an administrative entity. The court order stands on its own and represents what it purports to represent. As such, Petitioner's parents are considered legally separated.
3. Respondent found that the move from Huntington to Marion by Petitioner and his father was not a "bona fide" move under **Rule C-19-5**. See footnote 2, *supra*. Respondent's Conclusion was based upon the fact the Huntington residence was not "fully abandoned" as a residence because the mother and the youngest son still reside there; the legal separation was not "bona fide"; and the father's apartment in Marion is not "permanent residence." Although it is true the apartment is a one-bedroom apartment, there are no requirements that the apartment one chooses to live in must be of any particular dimensions or be a "permanent residence," especially since an apartment, by its very nature, is generally not considered "permanent."

Because the legal separation is a court order and not subject to challenge by the CRP nor Respondent, there is no legal basis for Respondent to find that the legal separation is not “bona fide.” There is also no requirements in Respondent’s by-laws regarding the dimensions of one’s living arrangements or the permanency of the living arrangement. The Respondent is without any legal bases to rely upon these factors.

4. One’s motivation for certain actions that are taken require analysis. Inevitably in such matters, an ultimate determination will be based in no small part upon the credibility of the parties. In this case, there is ample evidence and uncontradicted testimony that Petitioner has demonstrated poor personal discipline in his approach to and preparation for academics and athletics. He has been disrespectful towards others, as well as to his mother. His interpersonal relationships with other students and members of his own team have been less than desirable. Although an active member of his school’s football team, he engaged in an “open gym” basketball session at a neighboring school district during a school day. The circumstances at Huntington were certainly deteriorating for Petitioner such that a “fresh start” anywhere else would be beneficial, and this appears to be the case herein. Petitioner’s problems, however, have been exacerbated by the actions of his father. The father has engaged in a lengthy, vociferous campaign to have Petitioner’s football coach fired from his position. The denigration of the Huntington coach and the Huntington football program has become common knowledge throughout the area due to the persistent denunciations by the father. Other school districts have reported the father’s actions and have perceived his other statements as “shopping” his son’s athletic prowess. In addition, the father’s misrepresentation to the Huntington guidance counselor that he spoke with Petitioner’s English teacher about a change from her class raises questions regarding his veracity. Finally, given the principal placement of athletics in the lives of Petitioner and his father, the father’s statements that the move to Marion was in no way and to no degree motivated by any athletic considerations are not credible. Under **Rule 19**, a “transfer for primarily athletic reasons” includes in relevant part: “a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics.” The Assistant Commissioner who initially investigated this matter and determined that Petitioner should not be eligible for 365 days from his enrollment in Marion stated that her decision was based on this construction. The record supports her conclusion in this regard. The transfer was primarily for athletic reasons, as defined in **Rule 19**.
5. The intimation that, absent athletic participation, Petitioner’s academic and disciplinary progress enjoyed to date may deteriorate is not a legitimate consideration. If the stated reasons for transferring to Marion were to provide Petitioner a “fresh start” without consideration of athletics, then Petitioner is obtaining what was sought for him.

ORDER

1. The Case Review Panel, by a vote of 5-2, upholds the decision of the Respondent to deny eligibility for interscholastic athletic participation to Petitioner for 365 days from the date he enrolled in Marion High School.

DATE: February 15, 2001

/s/ Suellen K. Reed, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.